

1 B. James Fitzpatrick, Esq. (SBN: 129056)
FITZPATRICK, SPINI & SWANSTON
 2 555 S. Main Street
 Salinas, California 93901
 3 Telephone: (831) 755-1311
 Facsimile: (831) 755-1319
 4 E-Mail: bfitzpatrick@fandslegal.com

5 **WANGER JONES HELSLEY PC**
 265 E. River Park Circle, Suite 310
 6 Post Office Box 28340
 Fresno, CA 93720
 7 Telephone: (559) 233-4800
 Facsimile: (559) 233-9330
 8 E-Mail: ptoole@wjhattorneys.com

9 Patrick D. Toole #190118
 David E. Cameron #278061

10 Attorneys for: Plaintiff Mayalinda Bernal, on behalf of herself
 11 and all other similarly situated employees

12
 13 [Caption Continued On Next Page]

14
 15 **UNITED STATES DISTRICT COURT**
 16 **NORTHERN DISTRICT OF CALIFORNIA**
 17 **SAN JOSE DIVISION**

18 MAYALINDA BERNAL, on behalf of
 herself and all other similarly situated
 19 employees,

20 Plaintiff,

21 v.

22 DAVITA INC., doing business as DAVITA
 SOLEDAD DIALYSIS; SOLEDAD
 23 DIALYSIS CENTER, LLC doing business
 as SOLEDAD DIALYSIS; MARIAH
 24 SILVA; and DOES 1 through 50, inclusive,

25 Defendants.

Case No. 5:12-CV-03255-LHK

**STIPULATION RE: NOTICE TO
 PUTATIVE CLASS MEMBERS**

26
 27 ///

28 ////

1 Thomas M. McInerney (SBN 162055)
tmm@ogletreedeakins.com

2 Michael J. Nader (SBN 200425)
michael.nader@ogletreedeakins.com

3 Becki D. Graham (SBN 238010)
becki.graham@ogletreedeakins.com

4 **OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.**

5 Steuart Tower, Suite 1300

One Market Plaza

6 San Francisco, California 94105

Telephone: (415) 442-4810

7 Facsimile: (415) 442-4870

8 Attorneys for: Defendants Davita, Inc.,
Soledad Dialysis, LLC, and Mariah Silva

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Stipulation Re Authenticity and Business Records

Plaintiff Mayalinda Bernal and defendant DaVita Inc. (now known as DaVita Healthcare Partners Inc.) ("Defendant"), (collectively the "Parties") agree as follows:

WHEREAS, the Court's January 30, 2013 scheduling order provided that the parties were to work out the terms of a stipulation by February 22, 2013 providing notice to the applicable putative class members that their contact information may be disclosed to plaintiff's counsel;

WHEREAS, the Parties have conferred regarding this issue and agreed upon the attached notice, the selection of a claims administrator to distribute the notice, and to share the cost of the administrator;

NOW, THEREFORE, the parties hereby stipulate to the notice attached as Exhibit A hereto, which shall be electronically provided to the claims administrator on or about February 22, 2013, and that the class contact list shall also be electronically provided to the claims administrator in the requested format on February 22, 2013. The Parties further agree that the class contact list, minus any objecting person, be provided to Plaintiff's counsel within two business days of the expiration of the notice period, which is anticipated to be on or before April 3, 2013. The Parties request that the Court order that it be distributed pursuant to the parties' stipulation.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

FITZPATRICK, SPINI & SWANSTON

Dated: February 22, 2013

By: /s/B. James Fitzpatrick
B. JAMES FITZPATRICK

WANGER JONES HELSLEY PC

Dated: February 22, 2013

By: /s/Patrick D. Toole
PATRICK D. TOOLE

OGLETREE, DEAKINS, NASH, SMOAK
& STEWART, P.C.

Dated: February 22, 2013

By: /s/Thomas M. McInerney
THOMAS M. MCINERNEY

~~PROPOSED~~ ORDER

Based on the Stipulation re: Notice to Class Members entered into between plaintiff
Mayalinda Bernal and defendant DaVita Inc. (now know as DaVita Healthcare Partners Inc.),
the parties' stipulation is adopted and ordered by this Court.

IT IS SO ORDERED.

DATED: February 25, 2013


District Judge Lucy H. Koh

14447777.2 (OGLETREE)

Exhibit A

Notice to Potential Class Members of Request for Contact Information

[INSERT NAME AND ADDRESS]

Dear [INSERT NAME]:

This notice relates to your privacy rights and the potential disclosure of your name, home address and telephone number ("contact information") to the lawyers representing the plaintiff in a lawsuit. *Unless you object in writing on or before _____ (30 days from the date of mailing of this notice), your contact information will be disclosed to plaintiff's counsel.*

Mayalinda Bernal, a former Patient Care Technician, has filed a lawsuit against DaVita Healthcare Partners Inc. ("DaVita"). The lawsuit is pending in the United States District Court for the Northern District of California. (*Bernal v. DaVita HealthCare Partners Inc., et al., U.S.D.C., Northern District of California, Case No. 5:12-cv-03255-LHK*). In the lawsuit, Ms. Bernal claims in part that DaVita did not provide her with rest or meal breaks that met the requirements of the California Labor Code. DaVita denies these claims and asserts it has acted lawfully at all times. **The Court has made no determination as to whether any of Ms. Bernal's claims or DaVita's defenses are meritorious.**

Ms. Bernal seeks to bring this lawsuit as a class action on behalf of all current and former Reuse Technicians and Patient Care Technicians who worked for DaVita in California from August 10, 2010 to the present. The Court has not yet determined whether to allow this lawsuit to proceed on behalf of anyone other than Ms. Bernal, the named plaintiff. If the Court allows this case to proceed as a class action, you may be a member of a class that would be certified at that time.

If you worked or are working as a Reuse Technician and/or Patient Care Technician for DaVita from August 10, 2010 to the present, the attorneys for Ms. Bernal have asked DaVita to disclose to them your name, address and phone number. You have two possible choices.

- Option One: If you wish for your contact information (name, address, and telephone number) to be disclosed, do nothing and take no action.
- Option Two: If you do not want your contact information to be disclosed to plaintiff's counsel, you must sign the enclosed self-addressed stamped card and mail it no later than _____.

If you are contacted by any of the attorneys associated with this lawsuit, the decision about whether to speak to them is entirely yours. You have no obligation to speak to them or to any other person about the case. You will not be rewarded or penalized in any way by DaVita based on your decision to allow or not to allow your contact information to be released.

For your information, Plaintiff is represented by:

B. James Fitzpatrick
Charles Swanston
Fitzpatrick, Spini & Swanston
838 South Main Street
Suite E
Salinas, CA 93901
Tel: 831-755-1311
Fax: 831-755-1319

Patrick D. Toole
Wagner Jones Helsley PC
265 E. River Park Circle
Suite 310
Fresno, CA 93720
Tel: 559-233-4800
Fax: 559-233-9330

Defendant DaVita is represented by:

Thomas M. McInerney, Michael J. Nader, and Becki D. Graham
Ogeltree, Deakins, Nash, Smoak & Stewart, P.C.
Steuart Tower, Suite 1300
One Market Plaza
San Francisco, CA 94105
Telephone: 415.442.4810
Facsimile: 415.442.4870

You may contact attorneys for either or both sides with any questions or concerns that you may have. Do not contact the Court.

Sincerely Yours,

Rust Consulting
Privacy Administrator

Postcard Front

Bernal v. DaVita Healthcare Partners Inc. et al.

c/o Rust Consulting
[insert address]

Postcard Back

Bernal v. DaVita HealthCare Partners Inc., et al.
U.S.D.C., Northern District of California, Case No. 5:12-cv-03255-LHK

I **DO NOT** wish for my contact information to be disclosed by DaVita Healthcare Partners Inc. in connection with the above-referenced litigation.

I understand that if I do not return this completed card in the time permitted, my name, address, and telephone number, will be disclosed to Plaintiff's counsel in this lawsuit to permit investigation of the claims made in this case.

NAME

SIGNATURE

DATE

**FOR THIS CARD TO BE EFFECTIVE, YOU MUST COMPLETE AND MAIL IT
NO LATER THAN _____.**